89-89

Supreme Court, U.S.
FILED
JUL 17 1989
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

RANDALL NELSON EVANS
PETITIONER-APPELLANT

VS.

THE STATE OF GEORGIA
RESPONDENT-APPELLEE

PETITIONER-APPELLANT'S PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

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ITOR'S NOTE:

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QUESTION PRESENTED FOR REVIEW

1. DOES THE USE OF A GAINESVILLE, GEORGIA POLICE DEPARTMENT ROADBLOCK WITHOUT SPECIFIC GUIDELINES AND ADMITTEDLY NOT CONDUCTED IN COMPLIANCE WITH THE DICTA IN GEORGIA VS. GOLDEN, 171 GA. APP. 27; 318 SE2D 693 (1984), TO DETECT INTOXICATED DRIVERS, UNCONSTITUTIONALLY INFRINGE UPON A PERSON'S FOURTH AMENDMENT RIGHT TO BE FREE FROM UNREASONABLE SEARCHES AND SEIZURES?

2. MAY POLICE, IN THE ABSENCE OF SPECIFIC GUIDELINES, SPECIFIC JUDICIAL AUTHORIZATION, LEGISLATIVE ACTION, OR ADMINISTRATIVE DELEGATION, ESTABLISH ROADBLOCKS ENFORCING PARTICULAR CRIMINAL STATUTES SUCH AS STATUTES THAT PROSCRIBE DRIVING UNDER THE INFLUENCE OF INTOXICANTS OR ILLEGAL DRUGS?

[MOTION TO SUPPRESS TRANSCRIPT, PAGES 1 THRU 28].(ORDER,APP.24-29)

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

RANDALL NELSON EVANS
PETITIONER-APPELLANT

VS.

THE STATE OF GEORGIA
RESPONDENT-APPELLEE

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS
OF GEORGIA

RANDALL NELSON EVANS PETITIONS THIS COURT FOR A WRIT OF CERTIORARI TO REVIEW THE JUDGMENT AND OPINION OF THE COURT OF APPEALS OF GEORGIA, ENTERED IN THE CASE OF EVANS VS. GEORGIA, [CASE NO. A89A0142] 190 GA. APP. ___; ___ SE2D ___ (MAY 22, 1989).

COURTS INVOLVED IN QUESTION PRESENTED FOR REVIEW

THE COURT OF APPEALS OF GEORGIA AFFIRMED THE DECISION OF THE STATE COURT OF HALL COUNTY, GEORGIA, MARCH 10, 1989; THE SUPREME COURT OF GEORGIA DENIED CERTIORARI ON APRIL 19, 1989; AND, REHEARING MAY 10, 1989. THE COURT OF APPEALS OF GEORGIA AFFIRMED THE TRIAL COURT JUDGMENT ON MAY 22, 1989. ON MAY 11, 1989 NOTICE WAS GIVEN TO THE COURT OF APPEALS OF GEORGIA OF INTENTION TO APPLY TO SUPREME COURT OF THE UNITED STATES FOR WRIT OF CERTIORARI.

PARTIES

RANDALL NELSON EVANS, PETITIONER/APPELLANT; AND, THE STATE OF GEORGIA, RESPONDENT/APPELLEE.

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OPINION BELOW

THE OPINION OF THE COURT OF APPEALS OF GEORGIA WAS DATED MARCH 10, 1989; MOTION FOR REHEARING WAS DENIED ON MARCH 21, 1989; CERTIORARI IN THE SUPREME COURT OF GEORGIA WAS DENIED ON APRIL 19, 1989; AND, MOTION FOR REHEARING WAS DENIED MAY 10, 1989. THE COURT OF APPEALS OF GEORGIA'S DECISIONS ARE RECORDED IN THE "APPENDIX". THE COURT OF APPEALS' DECISION WILL BE CITED AS EVANS VS. GEORGIA [CASE NO. A89A-0142] 190 GA. APP. ___, ___ SE2D. ___. THE PETITIONER/APPELLANT RAISED THE CONSTITUTIONAL QUESTIONS IN MOTION TO SUPPRESS, MOTION FOR NEW TRIAL AND, ENTIRE APPELLATE PROCESS.

GROUNDS FOR JURISDICTION

THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C. 1257 (3), SINCE A RIGHT, PRIVILEGE AND IMMUNITY IS SPECIALLY CLAIMED UNDER THE CONSTITUTION OF THE UNITED STATES OF AMERICA.

STATEMENT OF THE CASE

MOTION TO SUPPRESS THE RESULT OF A FIELD SOBRIETY TEST AND SUBSEQUENT INTOXIMETER TEST WAS DENIED BY THE TRIAL COURT; IT BEING THE CONTENTION OF THE PETITIONER THAT HE WAS STOPPED BY POLICE AT A ROADBLOCK IN GAINESVILLE, HALL COUNTY, GEORGIA, CONDUCTED BY THE GAINESVILLE POLICE DEPARTMENT WHICH DID NOT COMPLY WITH THE REQUIREMENTS SET FORTH IN GEORGIA VS. GOLDEN, 171 GA. APP. 27; 318 SE2D 693 (1984); DELAWARE VS. PROUSE, 440 US 648 [99 SC 1391] 59 LE 2D. 660 (1979), AND STATE AND FEDERAL CONSTITUTIONAL DICTATES AGAINST UNREASONABLE SEARCH AND SEIZURE.

ACCORDING TO THE SWORN TESTIMONY OF PATROLMAN, RONALD COSGROVE, OF THE GAINESVILLE, HALL COUNTY, POLICE DEPARTMENT, THE ROADBLOCK ON JUNE 10, 1987 NOW IN

QUESTION, IN THIS APPEAL, WAS ON A TWO-LANE HIGHWAY, WITH ANOTHER STREET INTERSECTING AT RIGHT ANGLES, IN GAINESVILLE, HALL COUNTY, GEORGIA, AND WAS CONDUCTED ABOUT MIDNIGHT (12:00 AM) ON SAID DATE. THE IDEA FOR THE ROADBLOCK WAS THE DECISION OF THE ARRESTING PATROLMAN, AND HIS PATROLMAN PARTNER, WITH VERBAL KNOWLEDGE AND APPROVAL OF THEIR SERGEANT, WHO WAS OFF DUTY ON THAT PARTICULAR NIGHT. THE ROADBLOCK WAS NOT PURSUANT TO SPECIFIC PRE-ARRANGED PROCEDURES OR GUIDELINES, MADE BY SUPERVISORY POLICE PERSONNEL, AND WITHOUT ADVANCE OR IMMEDIATE NOTICE OF THE PUBLIC, EXCEPT FOR FLASHING POLICE-PATROL BLUE LIGHTS. AFTER THE ARREST OF PETITIONER/APPELLANT, THE GEORGIA VS. GOLDEN, SUPRA CASE CAME TO THE ATTENTION OF THE GAINESVILLE POLICE DEPARTMENT, AND GAINESVILLE ROADBLOCKS WERE DISCONTINUED BE-

CAUSE THAT AGENCY DID NOT, AND COULD NOT, COMPLY WITH THE GUIDELINES SET DOWN THEREIN. THE ARRESTING OFFICER HAD NO ARTICUABLE OR REASONABLE SUSPICION THAT THE PETITIONER/APPELLANT WAS INVOLVED IN ANY CRIMINAL ACTIVITY, WHEN THE INITIAL STOP TOOK PLACE AT THE ROADBLOCK. (MOTION TO SUPPRESS TRANSCRIPT, PGS. 1-28).

REASON FOR GRANTING WRIT

ARGUMENT AND CITATION OF AUTHORITIES

IN THE GEORGIA VS. GOLDEN CASE, SUPRA, THE FACTS RELATED WERE AS FOLLOWS:

1. THE ROADBLOCK WAS IMPLEMENTED BY SEVEN (7) D.U.I. TASK FORCE OFFICERS.

2. A SUPERVISORY OFFICER, CHARGED WITH OVERALL RESPONSIBILITY, CHOSE THE TIME PERIOD FOR THE ROADBLOCK.

3. THE CHECK-POINT FOR LICENSE AND INSURANCE WAS IDENTIFIED BY REFLECTING SIGNS, PLACED AT EACH APPROACH TO THE ROADBLOCK, AND BY ORANGE IRIDESCENT TRAFFIC CONES AND A PATROLCAR STATIONED ON THE SIDE OF THE ROAD WITH ITS EMERGENCY LIGHTS FLASHING. A "CHASE VEHICLE" WAS PRESENT.

4. AS EACH PASSING MOTORISTS REACHED THE CHECK-POINT, ONE (1) OF TWO (2) DESIGNATED "SCREENING OFFICERS" CHECKED FOR LICENSE, INSURANCE AND FOR SIGNS OF INTOXICATION.

5. IF A POSSIBLE OFFENSE WAS OBSERVED, THE SCREENING OFFICER NOTED IT ON A PRE-PRINTED FORM AND, THE DRIVER WAS INSTRUCTED TO PULL INTO AN ADJACENT PARKING LOT WHERE A "RECEIVING OFFICER" MADE A DETERMINATION OF CHARGES, OR OTHER ACTION, TO DETERMINE SOBRIETY.

6. BASED ON RESULTS OF "FIELD SOBRIETY TESTS", A SUSPECT WAS THEN EITHER PLACED UNDER FORMAL ARREST OR ALLOWED TO CONTINUE ON HIS WAY.

IF THE DRIVER WAS PLACED UNDER ARREST, HE WAS TRANSFERRED TO OTHER OFFICERS; ASKED TO CONSENT TO A BREATHLYZER TEST, UNDER THE "IMPLIED CONSENT" GEORGIA LAW; AND FURTHER ACTION TAKEN.

IN INSTANT CASE, THE ROADBLOCK WAS IMPLEMENTED BY TWO (2) PATROLMEN WITHOUT GUIDELINES, WHO USED A THIRD (3RD) BACKUP. NO SUPERVISORY PERSONNEL WAS PRESENT; THE NOTICE TO THE PUBLIC WAS FLASHING BLUE LIGHTS FROM PATROLCARS AT THE SCENE; THE ARRESTING OFFICER ACTED AS SCREENING, RECEIVING AND CUSTODIAL OFFICER; AND THERE WAS NO ADJACENT LOT TO HANDLE TRAFFIC.

THERE WERE NO ARTICUABLE FACTS, NOR WAS THERE REASONABLE SUSPICION TO SUSPECT CRIMINAL VIOLATION WHEN THE INITIAL STOP WAS MADE. THE CHIEF OF POLICE APPARENTLY KNEW ABOUT ROADBLOCKS, AND TACITLY APPROVED OF SAME. THE ARRESTING OFFICER HAD TRAINING.

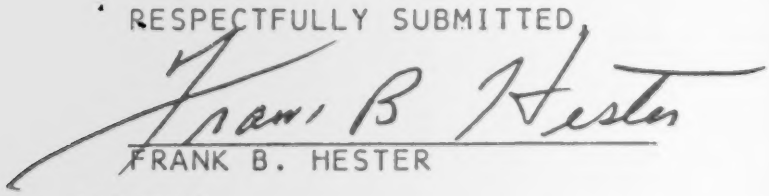
HOW CAN IT BE SAID THAT THE INSTANT SEARCH AND SEIZURE WAS CONSTITUTIONALLY VALID?

THE PETITIONER/APPELLANT URGES THAT THE JUNE 10, 1987 GAINESVILLE POLICE DEPARTMENT ROADBLOCK DID NOT COMPLY WITH THE DICTATES OF STATE AND FEDERAL CONSTITUTIONAL RIGHTS, AND GEORGIA VS. GOLDEN, SUPRA; AND DELAWARE VS. PROUSE, SUPRA, AND THAT HIS CONSTITUTIONAL RIGHT AGAINST UNREASONABLE SEARCH AND SEIZURE WAS VIOLATED. SEE INGERSOL VS. PALMER, 43 CAL.3D 134, 743 P.2D 1299 (1987).

CONCLUSION

IT IS RESPECTFULLY URGED THAT THE DECISION AND JUDGMENT OF THE COURT OF APPEALS OF GEORGIA, AFFIRMING THE DECISION OF THE STATE COURT OF HALL COUNTY, GEORGIA ON MAY 22, 1989 WAS IN ERROR, THAT VERY IMPORTANT CONSTITUTIONAL RIGHTS WERE DENIED THE PETITIONER/APPELLANT, AND THE WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA SHOULD ISSUE.

RESPECTFULLY SUBMITTED,



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CERTIFICATION AND CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I AM A MEMBER OF THE SUPREME COURT OF THE UNITED STATES, IN GOOD STANDING AND, THAT I HAVE DEPOSITED, IN THE UNITED STATES MAIL, ATLANTA, FULTON COUNTY, GEORGIA, THREE (3) COPIES OF THE WITHIN AND FOREGOING "PETITIONER/APPELLANT'S PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA", FIRST CLASS MAIL, POSTAGE PRE-PAID, AND ADDRESSED TO:

MS. LYDIA JACKSON, SOLICITOR
HALL COUNTY STATE COURT
HALL COUNTY COURTHOUSE
P.O. BOX 1072
GAINESVILLE, GEORGIA 30503

THIS THE 13th DAY OF July, 1989.

Frank B Hester

FRANK B. HESTER

GA. BAR NO. 349700

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APPENDIX

IN THE COURT OF APPEALS OF GEORGIA

A89A0142. EVANS V. THE STATE.

SOGNIER, JUDGE.

RANDALL NELSON EVANS APPEALS FROM HIS CONVICTION OF DRIVING UNDER THE INFLUENCE OF ALCOHOL.

IN HIS SOLE ENUMERATION OF ERROR, APPELLANT CONTENDS THE TRIAL COURT ERRED BY DENYING HIS MOTION TO SUPPRESS THE RESULTS OF A FIELD SOBRIETY TEST AND SUBSEQUENT INTOXIMETER TEST BECAUSE HE WAS STOPPED BY POLICE AT A ROADBLOCK WHICH DID

NOT COMPLY WITH REQUIREMENTS SET FORTH IN STATE VS. GOLDEN, 171 GA. APP. 27 (318 SE2D 693) (1984). WE DO NOT AGREE.

IN DELAWARE VS. PROUSE, 440 U.S. 648 (99 SC 1391, 59 LE2D 660) (1979), "THE UNITED STATES SUPREME COURT HELD THAT PATROLMEN MAY NOT STOP MOTORISTS AT RANDOM TO INSPECT THEIR DRIVER'S LICENSE AND VEHICLE REGISTRATION PAPERS, ABSENT SOME SPECIFIC, ARTICULABLE SUSPICION OF WRONGDOING. IT IS CLEAR, HOWEVER, THAT THE HOLDING IN PROUSE WAS NOT INTENDED AS A PROHIBITION AGAINST THE UTILIZATION OF HIGHWAY ROADBLOCKS TO CONDUCT SUCH INSPECTIONS, FOR THE SUPREME COURT SPECIFICALLY INDICATED IN THAT OPINION THAT ROADBLOCKS COULD BE CONSIDERED A VALID ALTERNATIVE TO RANDOM VEHICLE STOPS. [CIT.]" GOLDEN, SUPRA AT 29 (2). WE APPROVE THE USE OF A ROADBLOCK IN GOLDEN

AFTER CONSIDERING SEVERAL FACTORS FINDING THAT A BRIEF STOP WAS REASONABLE AND VIOLATED NO FOURTH AMENDMENT RIGHTS. ID. AT 29-30 (2). THE FACTORS CONSIDERED IN GOLDEN WERE THAT THE DECISION TO IMPLEMENT THE ROADBLOCK WAS MADE BY SUPERVISORY PERSONNEL RATHER THAN BY THE OFFICERS IN THE FIELD; ALL VEHICLES WERE STOPPED, LEAVING NO DISCRETION TO THE OFFICERS AS TO WHICH VEHICLES TO STOP; THE DELAY EXPERIENCED BY PASSING MOTORISTS WAS MINIMAL; THE OPERATION WAS WELL IDENTIFIED AS A POLICE CHECK-POINT; AND THE "SCREENING" OFFICER'S TRAINING AND EXPERIENCE WERE SUFFICIENT TO QUALIFY HIM TO MAKE AN INITIAL DETERMINATION AS TO WHICH MOTORISTS SHOULD BE GIVEN FIELD TESTS FOR INTOXICATION. ID.

WE AGREE WITH THE TRIAL COURT THAT IN THE CASE SUB JUDICE, LOOKING AT THE TOTALITY OF THE CIRCUMSTANCES SURROUNDING THE

ROADBLOCK, THE FACTORS CONSIDERED IN GOLDEN WERE SATISFIED. ALTHOUGH THE IDEA OF THE ROADBLOCK WAS INITIATED BY THE FIELD OFFICERS, IT WAS DONE WITH THE APPROVAL OF THEIR SUPERVISOR AND IN ACCORD WITH A CONTINUING PRACTICE OF THE GAINESVILLE POLICE DEPARTMENT; ALL PASSING VEHICLES WERE STOPPED; THE DELAY TO PASSING MOTORISTS WAS MINIMAL; THE ROADBLOCK WAS SET UP IN A WELL LIT AREA BY UNIFORMED OFFICERS, AND PATROL CARS WERE STATIONED ON BOTH SIDES OF THE ROAD AND ON THE MEDIAN WITH BLUE LIGHTS FLASHING, MAKING THE ROADBLOCK HIGHLY VISIBLE TO APPROACHING MOTORISTS; AND THE "SCREENING" OFFICER WAS SUFFICIENTLY TRAINED TO ENABLE HIM TO MAKE A DETERMINATION AS TO WHICH MOTORISTS SHOULD BE ASKED TO TAKE THE FIELD SOBRIETY TESTS.

ACCORDINGLY, THE BRIEF DETENSION OF APPELLANT AT THE ROADBLOCK DID NOT VIOLATE APPELLANT'S FOURTH AMENDMENT RIGHTS, AND THE TRIAL COURT DID NOT ERR BY DENYING APPELLANT'S MOTION TO SUPPRESS.

JUDGMENT AFFIRMED. BANKE, P.J., AND POPE, J., CONCUR.

Court of Appeals
of the State of Georgia

ATLANTA, March 21, 1989

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A89A0142. RANDALL NELSON EVANS v. THE STATE

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

Court of Appeals of the State of Georgia

CLERK'S OFFICE, ATLANTA MAR 21 1989

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Virginia McLaughlin

CLERK.

21

CLERK'S OFFICE, SUPREME COURT OF GEORGIA

Atlanta APR 19 1989

Case No. 46884, Randal Nelson Evans

V. The State C/A # A89A0142

The Supreme Court today denied the writ of certiorari in this case.

All the justices concur.

10 Days

EC

Very truly yours,

JOLINE B. WILLIAMS, Clerk

Clerk's Office, Supreme Court of Georgia

ATLANTA MAY 10 1989

The motion for a rehearing was denied today:

Case No. 46884, Evans v. The State

Yours very truly,

MRS. JOLINE B. WILLIAMS, Clerk

REMITTITUR

Court of Appeals
of the State of Georgia

ATLANTA, MARCH 10, 1989

The Honorable Court of Appeals met pursuant to adjournment.

The following judgment was rendered:

COURT OF APPEALS CASE NO. A89A0142
RANDALL NELSON EVANS V. THE STATE

This case came before this court on appeal from the State Court of Hall County; and, [redacted], it is considered and adjudged that

JUDGMENT OF THE COURT BELOW BE AFFIRMED.

BANKE, P.J., SOGNIER AND POPE, JJ., CONCUR.

LC NUMBERS: 8741934

FILED
HALL CO., GA.
1989 MAY 23 AM 9 00
CLERK SUPERIOR COURT
BY BP

~~BILL OF COSTS, $30.00~~

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, MAY 22 1989

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia, and that Frank B. Hester paid the above bill of costs.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

23

Victoria McLaughlin CLERK.

ORDER

THE ABOVE-CAPTIONED ACTION, HAVING COME BEFORE THIS COURT ON DEFENDANT'S MOTION TO SUPPRESS AND, A HEARING HAVING BEEN HELD ON THE MOTION, AND THE COURT HAVING CONSIDERED ALL EVIDENCE BEFORE IT, THE COURT FINDS THE FOLLOWING:

1.

DEFENDANT WAS STOPPED ON JUNE 10, 1987 AT A ROADBLOCK SET UP BY THE GAINESVILLE POLICE DEPARTMENT AND SUBSEQUENTLY ARRESTED FOR DRIVING UNDER THE INFLUENCE. DEFENDANT NOW MOVES TO SUPPRESS EVIDENCE OBTAINED AS A RESULT OF THE STOP ON THE GROUNDS THAT THE STOP AT THIS ROADBLOCK VIOLATED DEFENDANT'S FOURTH AMENDMENT RIGHTS.

2.

THE PRACTICE OF SETTING UP HIGHWAY

ROADBLOCKS FOR LICENSE CHECKS DOES NOT, PER SE, INFRINGE ON THE PUBLIC'S CONSTITUTIONAL RIGHT TO BE FREE FROM UNREASONABLE SEARCHES AND SEIZURES. STATE VS. SWIFT, 232 GA. 535 (1974). DELAWARE VS. PROUSE, 440 US 648 (1979). THE GEORGIA COURT OF APPEALS HAS SET OUT FACTORS TO BE CONSIDERED IN DETERMINING WHETHER A PARTICULAR STOP WAS CONDUCTED IN A NON-DISCRIMINATORY, MINIMALLY INTRUSIVE WAY.

"THE DECISION TO IMPLEMENT THE ROADBLOCK AT ISSUE IN THIS CASE WAS MADE BY SUPERVISORY PERSONNEL RATHER THAN BY THE OFFICERS IN THE FIELD, AND THE OPERATION WAS CARRIED OUT PURSUANT TO SPECIFIC, PREARRANGED PROCEDURES REQUIRING ALL PASSING VEHICLES TO BE STOPPED AT THE CHECKPOINT AND LEAVING NO DISCRETION TO THE OFFICERS IN THIS REGARD. IT IS CLEAR THAT THE DELAY EXPERIENCED BY PASSING MOTORISTS WAS MIN-

IMAL, LASTING ONLY A MINUTE OR TWO UNLESS A VIOLATION WAS NOTED, AND THAT THE OPERATION WAS WELL IDENTIFIED AS A POLICE CHECKPOINT. TAKING ALL OF THESE FACTORS INTO CONSIDERATION, WE HOLD THAT THE INITIAL DETENTION OF THE DEFENDANT AT THE ROADBLOCK WAS REASONABLE AND RESULTED IN NO VIOLATION OF HIS FOURTH AMENDMENT RIGHTS."

STATE VS. GOLDEN, 171 GA. APP. 27, 29 (1984).

IN THE CASE SUB JUDICE, THE POLICE OFFICER TESTIFIED THAT THE ROADBLOCK WAS IMPLEMENTED BY THE OFFICERS WITH THE APPROVAL OF THEIR SUPERVISOR; THAT CONDUCTING SUCH LICENSE AND INSURANCE CHECKS WAS A CONTINUING PRACTICE OF THE GAINESVILLE POLICE DEPARTMENT; AND THAT ALL PASSING VEHICLES WERE STOPPED. AS THE OFFICER DESCRIBED THE PROCEDURE FOLLOWED AT THE

ROADBLOCK, EACH DRIVER WAS ASKED TO SHOW A DRIVER'S LICENSE AND PROOF OF INSURANCE, THEN ALLOWED TO PROCEED, SO THAT THE DELAY TO MOTORISTS WAS MINIMAL. THE OFFICER FURTHER TESTIFIED THAT THE ROADBLOCK WAS SET UP IN A WELL-LIT AREA BY UNIFORMED OFFICERS AND THAT THERE WERE STATIONARY PATROL VEHICLES PARKED ON EITHER SIDE OF THE ROAD AND IN THE MEDIAN WITH ALL BLUE LIGHTS, HEADLIGHTS, AND EMERGENCY FLASHERS ON, MAKING THE ROADBLOCK HIGHLY VISIBLE TO APPROACHING MOTORISTS.

LOOKING AT THE TOTALITY OF THE CIRCUMSTANCES SURROUNDING THE ROADBLOCK, THE COURT CANNOT SAY THAT THE STOP VIOLATED THE DEFENDANT'S FOURTH AMENDMENT RIGHTS.

DEFENDANT IMPLORES THE COURT TO CONSIDER INGERSOL VS. PALMER, A DECISION OF THE CALIFORNIA SUPREME COURT NOT BINDING

ON THIS COURT. INGERSOL VS. PALMER, CALIFORNIA SUPREME COURT, NO. S.F. 25001, 10/29/87; AFF'G. 221 CALRPTR 659, 38 CRL 2320. THE ONLY FACTOR STRESSED IN THAT CASE THAT IS DIFFERENT FROM THE FACTS IN THIS CASE IS THAT THE DECISION TO IMPLEMENT THE ROADBLOCK WAS MADE BY THE SUPERVISORS, NOT THE OFFICERS IN THE FIELD. ALTHOUGH THE OFFICERS IN THE FIELD DID, IN THIS CASE, MAKE THE DECISION TO IMPLEMENT THE ROADBLOCK, IT WAS APPROVED BY THE SUPERVISORS AND WAS A PROCEDURE THAT HAD BEEN IN APPROVED USE BEFORE THAT TIME. THE REASON FOR THIS REQUIREMENT AS SPELLED OUT IN THE INGERSOL DECISION, IS TO "REDUCE THE POTENTIAL FOR ARBITRARY AND CAPRICIOUS ENFORCEMENT." INGERSOL VS. PALMER, 42 CRL 2117, 2118. THERE IS NOTHING IN THE FACTS AS STATED IN THE HEARING IN THIS MOTION TO INDICATE THAT THE ENFORCEMENT WAS EITHER ARBITRARY OR CAPRICIOUS.

BASED ON ALL THE ABOVE CIRCUMSTANCES, THE DEFENDANT'S MOTION TO SUPPRESS IS DENIED.

THIS THE 11 DAY OF APRIL, 1988.

S/A/KATHLENE F. GOSSELIN,
JUDGE, STATE COURT OF
HALL COUNTY

CC: LYDIA JACKSON, SOLICITOR
FRANK B. HESTER, ATTY FOR DEFENDANT